



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1996

Addendum

CYPRUS*

[11 September 1996]

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* The initial report, submitted by the Government of Cyprus is contained in document CAT/C/16/Add.2; for its consideration by the Committee, see document CAT/C/SR.168 and 169 and Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44), paras. 118-127.

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Introduction

1. This is the first supplementary report (second periodic) of the Republic of Cyprus submitted under article 19 of the Convention, the initial report having been submitted in June 1993 and considered by the Committee on 17 November 1993.

2. In the preparation of this report the following have been taken into consideration:

- (a) The guidelines of the Committee;
- (b) Steps taken by the Republic of Cyprus and developments which took place regarding the implementation of the Convention since the initial report was submitted;
- (c) Information on matters which remained unanswered during the consideration of the report;
- (d) The comments and recommendations of the Committee, made in its report dated 12 July 1994;
- (e) Contemplated future action.

3. Following the guidelines, this report is divided into two parts. The first part deals with new developments, steps and measures taken during the interim report. It includes an outline of contemplated measures. The second part contains additional information and responses to the comments and recommendations made by the Committee in its report.

- I. INFORMATION ON NEW DEVELOPMENTS AND MEASURES RELATING TO THE IMPLEMENTATION OF THE CONVENTION (following the order of arts. 1 to 16, as appropriate)

Developments after submission of the initial report

4. The major developments which occurred since the submission of the initial report are:

- (a) The preparation of a bill regarding mental health;
- (b) The preparation of a bill regarding the interpretation and implementation of international treaties;
- (c) The enactment of a new law regarding prisons;
- (d) The submission to the Council of Ministers of the report of the Commission of Inquiry set up to inquire into complaints made against the police of ill-treatment of persons held in custody and measures taken in consequence.

Mental health: internment of mental patients

5. The main law regulating the detention of persons suffering from mental disorder is the Mental Patients Law (cap. 252). There are also other provisions in the Criminal Procedure Law (cap. 155), which, however, are connected with the detention of persons suffering from insanity. Broadly speaking, in Cyprus, a person suffering from a mental disorder can be confined in a mental institution in the following cases:

(a) Where the patient is fit for confinement irrespective of whether he has committed an offence, if his confinement is considered necessary for his own protection or for the protection of the public (Mental Patients Law);

(b) Where the patient, being accused of having committed an offence, was acquitted by reason of insanity (Criminal Procedure Law, cap. 155, sect. 70 (2));

(c) Where the patient, being accused of having committed an offence, was found, at an inquiry being conducted for this purpose, unable to plead and follow the proceedings (Criminal Procedure Law, cap. 155, sect. 70 (1));

(d) Where a mental patient found wandering at large is apprehended and brought before the court to be dealt with under the provisions of the Mental Patients Law.

6. The Mental Patients Law was first enacted in 1931 and it cannot be denied that the Law is antiquated and does not satisfy the current notions relating to mental disorders and their treatment. For the purpose of modernizing the law relating to mental health, a bill has been prepared providing, inter alia, for the establishment and operation of mental institutions, the treatment of mental patients, the protection of their rights and the duties and responsibilities of their relatives.

7. The main innovation of this bill is that the confinement of a patient in a mental institution is now voluntary and compulsory confinement is restricted to cases where this is necessary for the protection of the patient and for the protection of the public. For the issue of an order for compulsory confinement, an application has to be made to the court, which will make a provisional order of three weeks' duration, for supervision, treatment and for determining whether an extension of the order is necessary. If, at the expiration of the provisional order, it is considered necessary that the patient undergo further treatment, then another order for a period not exceeding 12 months, is made.

8. In the case of voluntary treatment, there is no time limit for the duration of the treatment and this may be terminated at the patient's wish, unless the court is of the opinion that there are grounds for converting the voluntary treatment into compulsory confinement.

9. The bill was prepared by the Law Commissioner in cooperation with the Ministry of Health and is now undergoing a final reading before it is submitted to the Council of Ministers for approval and eventually laid before the House of Representatives. The Mental Health Services Department of the

Republic is contemplating the operation of group houses or hostels where small numbers of patients will be encouraged to live under nursing care. These patients will be discharged as certified mental patients and will be released at the end of the trial period.

Contagious diseases: additional information

10. Detainees who fall within the so-called "high risk" category are encouraged to undergo the HIV test. If the test is positive, they are placed at an isolation treatment unit.

11. The above practice was recently criticized by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in that there is no medical justification for isolating detainees for the sole reason that they are infected with the HIV virus or with Hepatitis B, without the manifestation of the symptoms of these diseases. As an alternative practice, the Committee recommended the adoption of a new system for the detention of persons falling within the high risk category in regular places of detention. This new policy should be accompanied by regular counselling of the personnel of the places of detention and of the detainees about infectious diseases (risks of contamination and methods of protection).

12. In response to the recommendation of the European Committee, the Ministry of Justice and Public Order is considering the possibility of abolishing the "treatment unit" as a special and separate place for the detention of persons infected with contagious diseases.

13. However, it is considered that special imprisonment conditions for AIDS carriers and for inmates suffering from Hepatitis B are imperative not only for medical, but also for various other reasons, such as:

(a) Better living conditions in bigger rooms, which have their own toilet and bathroom;

(b) The rejection of the AIDS carriers by the other inmates and the consequences that this rejection may have on the AIDS carriers themselves;

(c) The tendency that some of the AIDS carriers have to communicate their disease to other prisoners and the increased risk of communication of the disease, even between informed people, due to the living conditions prevailing in any prison.

14. In addition to the information contained in the initial report, it may be useful to refer to other legislative provisions in respect of contagious diseases in general.

15. Under the Infectious Diseases (Prisoners) Law, cap. 284, a detainee in a prison might be further detained in a hospital or asylum after the date of his release from prison, if he is suffering from a contagious or infectious disease. However, this antiquated law was repealed by the new Prisons Law which was enacted in May 1996 (No. 62 (I) of 1996).

16. It may be mentioned that the Lepers Law which was originally enacted in 1891, providing for the segregation and treatment of lepers, was repealed in 1957.

17. Another law involving restriction in the movement of people is the Quarantine Law, cap. 160, regulating the imposition of quarantine to prevent the introduction and spread of dangerous infectious diseases. For the purposes of this law, "infectious diseases" are cholera, plague, smallpox, typhus, yellow fever and other diseases of an infectious or contagious nature which may be declared to be so by a notification.

Interpretation and implementation of international treaties

18. A bill relating to the interpretation and implementation of international treaties was considered necessary for the purpose of clarifying and regulating certain issues which may guide the courts in a uniform approach to some of the issues pertaining to the implementation of international treaties and also providing direct and unequivocal information to the public regarding their rights safeguarded by the Convention. One of the main questions which triggered the idea of regulating by law the implementation of international treaties is what constitutes a self-executing provision which, as such, does not necessitate national legislation for its enforcement. What makes a provision self-executing is not always clear and on this judicial opinion differs. In the case of Malachtos and Armeftis, the Supreme Court, in its appellate jurisdiction, stated, inter alia, that:

"... for a treaty to be applicable it must be self-executing ... Only such provisions of a convention are self-executing which may be enforced by the Courts and which create rights for the individuals; they govern or affect directly relations of the internal life between the individuals, and the individuals and the State or the public authorities. Provisions which do not create by themselves rights or obligations of persons or interests and which cannot be justifiable or do not refer to acts or omissions of State organs are not self-executing ... The question whether or not treaties are self-executing is influenced by the wording of the convention, its provisions and the relevant constitutional law in a given country."

19. What is a self-executing provision is clearly stated in the bill and as such can be implemented without the need for any legal or administrative action on the part of the State. According to the bill, self-executing provisions are those which:

- (a) Are expressly stated to be so in the relevant law ratifying the treaty;
- (b) Are so found by the Court;
- (c) By their very nature relate to individual rights and liberties and do not require any action on the part of the State for the purpose of their implementation.

20. A most important provision in the bill is the establishment of a council with wide powers and functions such as:

Making of preparatory studies as to the signature, accession or ratification of treaties;

Recommending the amendment of national legislation consequential to the ratification of a treaty;

Giving information regarding treaties.

21. In the bill there is a clarifying provision regarding reciprocity. This provision also gives an answer to the questions raised during the consideration of the initial report. In the Malachtos case (see para. 18 above) the court pointed out that:

"... there are ... treaties whose nature, objective and function in the international relations and the internal legal order exclude the condition of reciprocity. Such are multilateral conventions the object of which is not to create any subjective or reciprocal rights for the contracting parties themselves, but their objective and their intent is to promote certain principles of law, moral and legal values and which a contracting party signs and ratifies only for the realization of this objective. Examples are: Conventions for the protection of human rights and the improvement and formulation of common rules and the achievement of social justice."

22. The issue of the status of the treaties in relation to the Constitution of the Republic and the national legislation was the subject of major concern to the Human Rights Committee when considering the second periodic report of the Republic of Cyprus on the International Covenant on Civil and Political Rights. It is in consequence of this that the Law Commissioner included in the aforesaid draft bill a relevant provision. In particular, clause 12 of the bill provides:

"It is clarified that the reciprocity referred to in article 169 (3) of the Constitution shall not be a condition for the application of:

(a) Multilateral treaties the object of which is not the creation of subjective or reciprocal rights from the contracting parties themselves but the promotion of certain principles of law or of certain moral or legal values (such as the protection of human rights and the improvement and formulation of commonly accepted rules and the attainment of social justice) and which a contracting party signs or ratifies only for attaining the said objectives,

(b) Treaties in relation to which there is international mechanism of supervision to which a party complaining of violation of the treaty may have recourse."

23. There are further provisions in the bill pertaining, inter alia, to the following:

Force of old treaties applicable before Cyprus became an independent State;

Effect of repeal of a ratifying law on the treaty;

Effect of a treaty on the Constitution;

Providing for penalty where an offence is created by a treaty but no provision for penalty is made therein;

Reciprocity not required in respect of multinational treaties;

General enabling provisions for making rules and regulations.

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

Punishment, jurisdiction

24. In the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Ratification) Law, 1990 (No. 235 of 1990), there are specific provisions making torture an offence punishable according to the degree of aggravating circumstances. In particular, section 3 of this Law provides:

- "3 (1) Any person subjecting another to torture is guilty of an offence and is liable:
- (a) To imprisonment for three years;
 - (b) To imprisonment for 10 years, if he causes serious bodily injury to the tortured person or uses means or methods of systematic torture.
- (2) If the person responsible for torture is a public officer or a person acting under his official capacity he is liable:
- (a) To imprisonment for five years;
 - (b) To imprisonment for 14 years if there exist the aggravating circumstances referred to in paragraph (b) of subsection (1) above.
- (3) If in consequence of torture the tortured person dies, the person responsible for the torture is liable to imprisonment for life.
- (4) For the purposes of this section the word 'torture' has the meaning assigned to it in Article 1 of the Convention."

25. As far as matters of jurisdiction are concerned, these are regulated by the Courts of Justice Law 1960 (No. 14 of 1960) and the Criminal Code (cap. 154). Section 20, subsection (1), of Law 14 of 1960 gives jurisdiction to an assize court to try any offence committed:

- (a) Within the territorial limits of the Republic of Cyprus; or
- (b) Within the Sovereign Areas of the Bases as created by the Treaty of Establishment of the Cyprus Republic by a Cypriot against or in relation to a Cypriot citizen;
- (c) In any foreign country by a citizen of the Republic while he was acting in the service of the Republic, or
- (d) On any ship or aircraft registered in the Republic; or
- (e) In such other places and under such circumstances as may be provided by law.

Section 5, subsection (1), of the Criminal Code (cap. 154) gives jurisdiction to the Cyprus courts to try any offence committed:

- (a) Within the territory of the Republic; or
- (b) Within the Sovereign Base Areas by a Cypriot against or in relation to a Cypriot; or
- (c) In any foreign country by a citizen of the Republic whilst in the service of the Republic; or
- (d) In any foreign country by a citizen of the Republic if the offence is one punishable in the Republic with death or imprisonment exceeding two years and the act or omission constituting the offence is also punishable by the law of the country where it was committed;

Provided that if in respect of the act or omission constituting the offence the death penalty is not provided for by the law of the country where the act or omission was committed, while the death penalty is provided for in the Republic, the death penalty shall not be imposed in the Republic but such citizen shall be liable to any other punishment up to imprisonment for life; or

- (e) In any foreign country by any person if the offence is:
 - (i) Treason or an offence against the security of the Republic or the constitutional order; or
 - (ii) Piracy; or
 - (iii) Connected with the coin or currency notes of the Republic; or
 - (iv) Related to unlawful dealing in dangerous drugs; or

- (v) One to which, under any International Treaty or Convention binding on the Republic, the law of the Republic is applicable.

26. The above provisions are, obviously, in line with article 5 of the Convention. In particular, paragraph (e) of subsection (1) of section 20 of Law 14 of 1960 and paragraph (d) of subsection (1) of section 5 of the Criminal Code, as a residuary clause, complement subparagraph (c) of paragraph 1 of article 5 of the Convention, without any need to take further measures in domestic legislation, since by its ratification the Convention has become part of the domestic law.

Article 8 of the Convention

27. This article of the Convention is self-executing and there is no need to take any internal measures in order to give effect to this provision. By its ratification, the Convention has not only become part of the domestic legislation but has, by article 169 of the Constitution of the Republic, acquired a superior force over any national legislation which is in conflict with the Convention. Therefore, article 8 provides for additional extraditable offences which are applicable to Cyprus.

Commission of Public Inquiry

- (a) Conclusions of the Commission of Public Inquiry concerning complaints of ill-treatment by the police

28. The Commission of Inquiry was set up in 1993 by the Council of Ministers to examine eight cases concerning complaints of torture and ill-treatment by the police. The allegations regarding the nature of torture used, in all of the complaints, included hanging by the legs, electric shocks and blows with clubs and truncheons and the circumstances under which it has allegedly been inflicted generally involved interrogations at night, verbal abuse and the wearing of hoods by the police officers and the victims.

29. The Commission, after hearing the testimonies of the complainants, the police officers, the medical officers and other witnesses and after considering the available evidence, in respect of each case, reached the conclusion that the complainants had been tortured or ill-treated by the police. The Commission in its general conclusion condemned the nature of the torture used by the police and the operation in the Limassol Police Station of an organized system of subjecting detainees to inhuman treatment during interrogation. It also noted, that, though the mission of the police is difficult to accomplish, recourse to violence and ill-treatment is unacceptable and suspects should be dealt with in a humane manner, using proper techniques and methods.

30. One of the cases examined by the Commission, was that of Lykourgos Vassiliou. The Commission of Inquiry found that the complainant was violently ill-treated by the police, as a result of which he suffered serious bodily injuries. The Commission took into consideration the judgement of the Assize Court of Larnaca where the accused police officers were acquitted of

the charges of ill-treatment, but, nevertheless, the Commission had no doubt that the complainant had suffered serious injuries caused by the police. The Commission noted that the reason for reaching a different conclusion from the Assize Court was that, in addition to the evidence presented before the Assize Court, the Commission could also take into consideration a videotape recorded by a private television channel, showing the complainant being ill-treated by the police. The same videotape could not be made admissible as evidence by the Assize Court because of certain legal impediments.

(b) Measures taken consequent to the conclusions of the Commission of Inquiry

31. On the basis of the conclusions of the Commission of Inquiry and acting on the advice of the Attorney-General of the Republic, the Council of Ministers decided that prima facie there were special reasons of public interest which might justify the termination of the services of 12 members of the police and invited them to submit their representations in writing within a period of four weeks.

32. Upon considering the representations submitted, the Attorney-General, in an opinion to the Council of Ministers, stated that there was sufficient evidence to justify the taking of measures against eight of them including their expulsion from the police.

33. The Council of Ministers, after considering the written representations of the 12 police officers and the recommendations of the Attorney-General, decided:

- (i) To terminate the services of three senior members of the police;
- (ii) To appoint special criminal investigators for cases in which five members of the police appeared to have been involved;
- (iii) To examine whether any disciplinary offences had been committed by police officers in other cases.

34. As far as the case of Lykourgos Vassiliou is concerned, no measures have been taken against those responsible for the injuries, since the case has been adjudicated by the Assize Court and the accused have been acquitted.

(c) Other action that had been taken in response to the allegations of ill-treatment

35. Due to a series of complaints alleging ill-treatment by the police, certain measures had been taken before the Commission of Inquiry reached its conclusions.

36. One of the measures taken, was the enactment of the Commissioner for Administration (Amendment) Law of 1994 (No. 98 (1) of 1994). This Law empowers the Commissioner to investigate complaints against any officer exercising an administrative or executive function or other activities in violation of human rights or in violation of the principles of proper administration.

37. Moreover, in an attempt to increase sensitivity in the protection of human rights, great emphasis has been placed on lectures and subjects being taught in the Police Academy concerning the respect and protection of human rights. These lectures are being given by university professors, by the Attorney-General himself and other members of his office, and qualified senior police officers. Similar lectures are also given in all regional police departments.

38. It is further to be noted that during the initial and in-service training police officers are taught and trained in using modern investigation techniques. They are also instructed to interrogate and obtain statements from suspects according to the provisions of the Judge's Rules (directives for the proper interrogation of suspects issued by the Home Office of the United Kingdom and hitherto applicable to Cyprus).

39. Furthermore, a circular has been issued by the Minister of Justice and Public Order to all police officers stressing, inter alia, that although the mission of the police is difficult and serious, it must always be effected in accordance with the Constitution of the Republic, the international conventions safeguarding human rights and the laws of the Republic.

Action taken in response to recommendations of the European Committee for the Prevention of Torture

40. The Ministry of Justice and Public Order, in compliance with a recommendation of the European Committee for the Prevention of Torture, has introduced a special form to be completed whenever an individual is arrested by the police and is held in a police detention centre.

41. This form contains the following particulars:

The name of the police station where the detainee is held;

The serial number in the register where the name of the detainee is entered;

The name of the detainee;

The date and time of arrest;

The name of the police officer effecting the arrest where an arrest warrant has been issued;

Brief description of the offence for which the detainee was arrested;

The station at which the offence was filed and the serial number in the criminal cases records;

The date and time at which the detainee entered the detention centre;

Any visible injuries on the detainee;

Other remarks;

Date and time of release.

The form must be updated regularly regarding the date and time of any movement of a detainee, visits by a doctor/lawyer, questioning of a detainee, etc. These entries must be signed by the person in charge of the detainee. It is to be noted that this form is additional to any other entries into books/records/documents already kept in accordance with other existing instructions, such as the station ledger, conviction record, etc.

42. The Ministry of Justice and Public Order is also considering implementing the recommendation of the European Committee for the Prevention of Torture regarding the use of an electronic recording system for police interrogations with all necessary safeguards for the authenticity of such recording, such as obtaining the detainee's consent, sealing of the tape in the presence of the detainee and the making of this an authentic copy of the recording.

43. In 1995 there was a complaint by a certain Osman Yusuf (Erkan Egmez) that he was severely ill-treated by the police during his arrest and detention. The Attorney-General as a result entered a nolle prosequi against the complainant of the offence of drug trafficking for which he was arrested. Following this the complainant filed a complaint for investigation by the Commissioner for Administration of the Republic, who promptly dealt with the matter, finding the complaints to be valid. The case is now back with the Office of the Attorney-General for decision as to the appropriate steps to be taken in view of certain legal peculiarities of the case.

III. CONCLUSIONS

44. The Republic and the people of Cyprus are very sensitive on matters of torture and ill-treatment particularly of persons being held by the authorities. The report of the Commission of Inquiry regarding complaints of ill-treatment caused a public outcry. The Government responded promptly and drastically to the report and measures were, and are being, taken for the elimination of any action which may amount to a violation of human rights.

45. The Attorney-General of the Republic, an independent officer under the Constitution, has repeatedly stressed to the police (at his lectures to the Police Academy and in a circular addressed to them) that he will in no case tolerate the use of any kind of force on the part of police organs or other persons, either during detention or during interrogation and further, that he is not prepared to allow the use of any testimony which has been obtained in such a way. The Attorney-General emphasized that it must be clearly understood that the modern way of investigating crimes aims at securing objective evidence, scientific or other, rather than depositions/confessions.

46. An example of the determination of the Attorney-General not to tolerate the use of force of any kind is the entry of a nolle prosequi in the case of Osman Yusuf (Erkan Egmez), referred to earlier in this report, who was accused of the serious international offence of drug trafficking.
